

WILLIAM E. JEFFERS, JR.
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IBLA 80-596, 80-617

Decided August 18, 1980

Appeals from decisions of the Montana State Office, Bureau of Land Management, dismissing protests with respect to oil and gas lease offers M 46185 through M 46190.

Dismissed.

1. Administrative Procedure: Generally--Appeals--Rules of Practice:
Appeals: Dismissal-- Secretary of the Interior

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

APPEARANCES: David R. Vandiver, Esq., Losee, Carson & Dickerson, P.A., Artesia, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

These appeals are taken from two decisions dated March 20 and April 1, 1980, by the Montana State Office, Bureau of Land Management (BLM), dismissing appellants' protests with respect to the above-listed six oil and gas lease offers which were returned to appellants pursuant to Secretarial Order No. 3049 (February 29, 1980). That order temporarily suspended issuance of both simultaneous and over-the-counter oil and gas leases. Section 3(b)(3) of the order, relied on by BLM in its decisions, states as follows: "The Bureau of Land Management shall refuse to accept the filing of "over-the-counter" oil

and gas lease applications tendered under 43 CFR Subpart 3111 on or after the date of this order." Appellants' offers were received by BLM on the effective date of the order, February 29, 1980.

The Secretary revoked the suspension by order No. 3051, dated April 7, 1980, and directed resumption of leasing upon institution of modifications in the noncompetitive oil and gas leasing systems on June 16, 1980. 45 FR 30056 (May 6, 1980).

In their statement of reasons, appellants concede the Secretary's authority to suspend issuance of noncompetitive leases. They argue, however, that the Secretary may not suspend the acceptance of over-the-counter offers in absence of a validly promulgated regulation. Appellants contend that BLM's refusal to accept their offers violated 43 CFR 3111.1-1(a) which states in part that an offer "will be considered filed when it is received in the proper office during business hours." Appellants assert:

Although the Secretary had the discretionary authority to suspend the issuance of noncompetitive leases, he lacked the discretion to preclude the acceptance for filing of over-the-counter offers and the priorities they establish without following the APA. The failure of the State Office to consider Jeffers' over-the-counter offers is contrary to law.

(Statement of Reasons, p. 5). Thus, appellants apparently contend that their offers should have been accepted, filed, and held in abeyance pending termination of the suspension imposed by order No. 3049.

[1] In effect, appellants challenge the legality and validity of Secretarial Order No. 3049. We have repeatedly held that in cases where the basis of an action by an agency of this Department is a Secretarial order, this Board will only review the case for the purpose of deciding whether the order was properly applied and implemented. Texas Oil & Gas Corp., 46 IBLA 50 (1980); see, e.g., Robert v. Bailey, 12 IBLA 253 (1973), aff'd sub nom. Krueger v. Morton, 539 F.2d 235 (D.C. Cir. 1976); Woods Petroleum Corp., 12 IBLA 247 (1973); Marvin E. Weaster, 10 IBLA 277 (1973). Had the State office accepted and filed appellants' offers it would have acted contrary to the express directives of the order, which mandated that over-the-counter offers could not be accepted for filing. In refusing to accept the offers, BLM properly applied and implemented the order. Since the Board is without jurisdiction to entertain questions directed to the validity ^{1/} of the order, the appeal must be dismissed.

^{1/} Cf. Richard K. Todd, 68 I.D. 291, 296 (1961).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is hereby dismissed.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

